



BOULT • CUMMINGS
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RECEIVED

Henry Walker
(615) 252-2363
(615) 252-6363
Email: hwalker@boultoncummings.com

T.R.A. DOCKET ROOM

March 3, 2004

Hon. Kim Beals, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, Tennessee 37238

Re Petition for Arbitration of Celco Partnership D/B/A Verizon Wireless
Docket No. 03-00585

Dear Hearing Officer Beals:

Enclosed please find the original and fourteen (14) copies of CMRS Providers' Position on Interim Compensation filed on behalf of the CMRS Providers. Also enclosed is the original and fourteen (14) copies of the Joint Issues Matrix filed on behalf of the CMRS Providers and the ICO Coalition. Please note that simply because of logistics, the ICO Coalition did not receive the final version of the Joint Issues Matrix until late yesterday and has informed the CMRS Providers that it has not had an opportunity to completely review the document. The ICO Coalition has, however, informed the CMRS Providers that it is in general agreement with earlier reviewed versions of the Joint Issues Matrix. The parties are going ahead and submitting this Joint Issues Matrix in order to comply with the Procedural Schedule. The parties also wish to point out that inasmuch as all parties may seek to continue to attempt to resolve or remove open issues, the matrix is a dynamic document in any event and it does not by itself establish what issues actually remain open nor the specific definitive position of a party.

Pursuant to the Procedural Schedule, a Protective Order was to be filed today as well. The CMRS Providers and the ICO Coalition jointly request that the Hearing Officer grant an extension for the filing of the Protective Order. Despite the parties' best efforts, the parties were unable to complete a draft. The parties expect to be able to submit a draft by Monday, March 8th.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By.

Henry Walker
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Henry Walker

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LAW OFFICES
414 UNION STREET, SUITE 1600, P.O. BOX 198062, NASHVILLE, TN 37219
TELEPHONE 615 244 2582 FACSIMILE 615 252 6380 www.boultoncummings.com

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

JOINT ISSUES MATRIX

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 1:</p> <p>Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?</p>	<p>Yes The FCC rules expressly require the ICOs to interconnect directly or indirectly with the CMRS provider</p>	<p>The ICOs are already in full compliance with the requirements of Section 251(a) of the Act establishing the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications providers including the CMRS providers. The ICOs are connected with other carriers and are willing to interconnect with any other carrier that may request interconnection. Section 251(a) of the Act sets forth the "general duty" of interconnection and is separate and distinct from the specific Section 251(b)(5) requirements regarding the exchange of traffic. Accordingly, a carrier's choice to interconnect indirectly pursuant to Section 251(a) is distinct from a carrier's choice to seek Section 251(b)(5) which under the FCC's established rules, requires a physical interconnection with the carrier from which a reciprocal compensation arrangement is requested. To the extent that the CMRS providers' Issue 1 position suggests requirements that go beyond the simple requirements of Section 251(a) of the Act, or infer a resolution of other issues to be discussed below, the ICOs' positions on these issues are set forth below</p>
<p>Issue 2:</p> <p>Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO?</p>	<p>Yes The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered</p>	<p>The CMRS providers do not understand the position of the ICOs. The three-party transit service arrangement is an arrangement not within the scope of the standards of the FCC's Subpart H rules. Those rules define transport and termination arrangements for which the specific framework of reciprocal compensation applies. The requirements for such framework do not include the situation where an interexchange carrier (BellSouth or any other carrier) commingles third party traffic of CMRS providers with the interexchange carrier's own traffic. The tandem arrangement under which BellSouth switches the CMRS provider traffic onto trunks commingled with BellSouth's interexchange carrier access traffic is not an interconnection arrangement that is within the definitions of the Subpart H rules. Nor is any LEC obligated to accept traffic from a physically connecting interexchange or toll carrier subject to terms and conditions that alleviate that interexchange carrier from payment for the termination of the traffic, irrespective of whether the traffic</p>

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 2b (excluding Verizon Wireless and Cingular Wireless):</p> <p>Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)?</p>	<p>Yes The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.</p>	<p>originates on another carrier's network</p> <p>The ICOs understand that the CMRS providers have a separate and clear right to pursue physical connections with the ICOs which may be subject to specific interconnection requirements. Accordingly, and as an alternative to the establishment of physical connections, the ICOs are willing to resolve fair, competitively neutral, non-discriminatory three-party arrangements under which all of the parties may otherwise avoid burdensome proceedings</p> <p>In some instances, the ICOs have no local exchange traffic that they send to the CMRS providers for termination. In such cases, even if the reciprocal compensation rules were to apply, there is no responsibility for terminating compensation since there is no traffic delivered for termination to the CMRS provider's network</p> <p>The willingness of the ICOs expressed in the course of negotiations to send local exchange service traffic via a three-party BellSouth tandem arrangement is conditioned on the agreement of the CMRS providers to accept responsibility for the transport on the BellSouth network of the traffic beyond the ICO's network to a point of interconnection with the CMRS provider. The ICOs object to any attempt by the CMRS providers to require an ICO to take financial responsibility for the transport of traffic beyond the ICO's network</p> <p>The CMRS providers (notably excluding Verizon Wireless) are simply incorrect in their portrayal of the established rules, they have provided an incomplete and misleading explanation of their position that ignores the clear statements of the FCC. Moreover, the CMRS providers have misunderstood or misstated the ICOs' position. The ICOs' position is that a LEC's obligation to pay reciprocal compensation is applicable only with respect to the LEC's local exchange service traffic. The obligation to pay reciprocal compensation cannot extend to a call that is carried by the originating customer's chosen interexchange carrier. Interexchange carrier traffic is mutually exclusive from the traffic subject to the reciprocal compensation framework. The ICOs positions are.</p> <p>1. Traffic that is interexchange carrier traffic is not subject to the framework of reciprocal compensation, it is subject to the framework of access. As discussed below, the FCC has explicitly verified this treatment of traffic</p>

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 2b (excluding Verizon Wireless and Cingular Wireless):</p> <p>Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)?</p>	<p>Yes The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered</p>	<p>originates on another carrier's network</p> <p>The ICOs understand that the CMRS providers have a separate and clear right to pursue physical connections with the ICOs which may be subject to specific interconnection requirements. Accordingly, and as an alternative to the establishment of physical connections, the ICOs are willing to resolve fair, competitively neutral, non-discriminatory three-party arrangements under which all of the parties may otherwise avoid burdensome proceedings</p> <p>In some instances, the ICOs have no local exchange traffic that they send to the CMRS providers for termination. In such cases, even if the reciprocal compensation rules were to apply, there is no responsibility for terminating compensation since there is no traffic delivered for termination to the CMRS provider's network</p> <p>The willingness of the ICOs expressed in the course of negotiations to send local exchange service traffic via a three-party BellSouth tandem arrangement is conditioned on the agreement of the CMRS providers to accept responsibility for the transport on the BellSouth network of the traffic beyond the ICO's network to a point of interconnection with the CMRS provider. The ICOs object to any attempt by the CMRS providers to require an ICO to take financial responsibility for the transport of traffic beyond the ICO's network</p> <p>The CMRS providers (notably excluding Verizon Wireless) are simply incorrect in their portrayal of the established rules; they have provided an incomplete and misleading explanation of their position that ignores the clear statements of the FCC. Moreover, the CMRS providers have misunderstood or misstated the ICOs' position. The ICOs' position is that a LEC's obligation to pay reciprocal compensation is applicable only with respect to the LEC's local exchange service traffic. The obligation to pay reciprocal compensation cannot extend to a call that is carried by the originating customer's chosen interexchange carrier. Interexchange carrier traffic is mutually exclusive from the traffic subject to the reciprocal compensation framework. The ICOs positions are:</p> <ol style="list-style-type: none"> 1. Traffic that is interexchange carrier traffic is not subject to the framework of reciprocal compensation, it is subject to the framework of access. As discussed below, the FCC has explicitly verified this treatment of traffic.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		<p>[See ICO Exhibit 1, Section 3.4, and ICO Exhibit 2, Section 3.1.3.]</p> <p>2. The scope of reciprocal compensation is defined as local exchange service traffic between a LEC and CMRS provider.¹ Interexchange service traffic between the IXC and the CMRS provider does not constitute traffic handled by the LEC. Interexchange service traffic is not the traffic of the LEC which provides only access service. It is nonsensical to apply reciprocal compensation obligations to a LEC when the call is not treated as "local exchange service," but is carried by the customer's toll provider.</p> <p>3. The CMRS providers asked the FCC to declare that the framework of access applies to traffic that IXCs terminate to CMRS providers, and the FCC found that the framework of access applies.²</p> <p>4. For interexchange services, the IXC is the service provider, the IXC is the provider that bills and receives the service revenues for the provision of the interexchange call; and it is the IXC provider which has the revenue to compensate the terminating carrier. While the FCC clarified that the framework of access applies for traffic that IXCs terminate to CMRS providers, the FCC questioned whether the CMRS providers had established the proper contractual obligations between the IXC and the CMRS provider in a manner that obligates the IXC to provide compensation. Accordingly, the CMRS providers have been left by the FCC in the position of knowing that the framework of access applies between an IXC and the CMRS provider but collecting from the IXC may be difficult. Finding themselves in this dilemma, some CMRS providers (excluding</p>

¹ The FCC has stated that the duty to establish reciprocal compensation is only with respect to a LEC's "local exchange service." *First Report and Order* at para. 1045 ("[P]ursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange services." Underlining added.) The framework does not apply to a service that a LEC does not offer or provide. The FCC also understood that the framework only applies to "certain" traffic, not all traffic (will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers). *Id.* Certain traffic does not mean all traffic, and local exchange service traffic does not mean interexchange service traffic.

² *Declaratory Ruling*. In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, WT Docket No. 01-316, released July 3, 2002. The CMRS providers will attempt after the fact to suggest that the FCC's findings regarding IXCs and the access charge framework were confined to interMTA IXC traffic only. That is once again misleading and wrong for the following reasons: (a) there is no evidence that the FCC's decision is confined to interMTA IXC traffic; the discussion is with respect to interstate access which is both interMTA and intraMTA, (b) an IXC is oblivious as to whether a interexchange service call in interMTA or intraMTA, and (c) the CMRS provider's petition and the FCC's discussion does not even mention this issue.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		<p>Verizon Wireless) have proposed irrationally that somehow the LEC providing access services to the IXC should be responsible for the payment of reciprocal compensation to compensate for the fact that the wireless carrier failed to establish proper terms and conditions when it terminates the traffic of an IXC. The ICOS respectfully urge the TRA to reject this attempt by those CMRS providers that would burden the ICOS for payment to cover their failing to establish proper access arrangements with IXCs</p> <p>⁵ The petitions of the CMRS providers demonstrate their misunderstanding of IXC services and the distinction from LEC services. In the last paragraph of their discussion of Issue 2b, they suggest that their position “does not impact the originating ICO’s ability to assess toll charges on its end-users for these calls (assuming they are toll calls)”³ This suggestion is inconsistent with the manner in which interexchange toll services are provided. Toll service is not a local exchange service, it is an inter-exchange carrier service. In their capacity as incumbent LECs, the ICOS provide access to interexchange carriers under an equal access arrangement, they do not provide intralATA toll services like BellSouth. The ICOS’ involvement in an interexchange call is simply to provide originating access services to the presubscribed IXC or toll carrier. The ICOS do not bill toll on behalf of their LEC operations, toll charges are billed on behalf of interexchange carriers.⁴</p> <p>⁶ An examination of the interconnection arrangements that BellSouth has with CMRS providers will reveal that BellSouth provides no compensation to CMRS providers for interexchange service traffic that BellSouth switches to competing interexchange carriers on an equal access basis, including those interexchange carriers that compete with BellSouth for the provision of intrastate, intralATA interexchange toll business. BellSouth provides no compensation to CMRS providers for traffic that is</p>

³ E.g., Sprint PCS at p. 14

⁴ There is a distinct difference between BellSouth and the ICOS here. BellSouth is an intrastate, intralATA interexchange carrier that competes with other intrastate interexchange carriers, but the ICOS are not. BellSouth does terminate interexchange service calls to CMRS providers while the ICOS do not.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		<p>terminated to the CMRS providers by other interexchange carriers</p> <p>7 The CMRS providers' demand for reciprocal compensation on calls handled by IXCs is inconsistent with facts and a common sense understanding of the industry and the FCC's specific conclusions.⁵</p> <p>For all of these reasons, the position of the CMRS providers set forth under Issue 2b should be rejected and the issue should be dismissed</p>
<p>Issue 3:</p> <p>Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO?</p>	<p>The carrier on whose network a call originates is responsible for paying the carrier on whose network the call terminates</p>	<p>When a CMRS carrier elects to utilize BellSouth to transit traffic to the ICO networks instead of establishing a physical point of interconnection with the ICO network, the most reasonable administrative and efficient approach is that: 1) BellSouth contracts to provide the transit service to the CMRS provider; 2) the CMRS provider compensates BellSouth for the transport and termination service it receives; and 3) BellSouth compensates the ICO for the termination of all the traffic BellSouth carries to the ICO network through the interconnection of the common trunk group. This approach is consistent with the agreements that BellSouth and the CMRS providers have reached with independent telephone companies in other states in which BellSouth operates</p> <p>While alternative approaches to the compensation arrangement may be possible (i.e., the CMRS provider pays BellSouth and BellSouth is responsible for compensation to the ICOs, or multiple CMRS providers each pay the ICOs even though they are not directly interconnected), the mechanism utilized ultimately depends on what arrangements and contracts are established between and among multiple parties. The payment mechanism is not dependent upon any established interconnection standard that is subject to arbitration. Throughout the industry, it has been common practice for CMRS carriers to utilize interexchange carriers to deliver traffic for termination in the absence of direct physical interconnections. The CMRS providers are well aware that under these circumstances, IXC terminates the traffic to the IEC,</p>

⁵ The ICOs note that Verizon Wireless correctly has not joined in with the other CMRS providers on this issue because Verizon Wireless has already recognized in *ex parte* presentations with the FCC that traffic carried by an IXC should not be part of the reciprocal compensation framework. See Notice of Ex Parte Presentation, CC Docket No. 01-92 -Intercarrier Compensation, filed by Verizon Wireless with the FCC on January 27, 2003 ("IXC-carried traffic should not be subject to reciprocal compensation even if it originates and terminates in the same MTA.") Consistent with the fact that Cingular's part owner, BellSouth, does not provide compensation to CMRS providers for other IXCs' traffic, an examination of Verizon's wireline local exchange carrier interconnection agreements with CMRS providers, including those with its affiliate Verizon Wireless, would demonstrate similar results

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		<p>the CMRS provider compensates the IXC for the transport and termination service, and the IXC compensates the LEC for terminating access</p> <p>Under the existing arrangements and practices that govern BellSouth's interconnection to the ICO networks, and pursuant to which BellSouth offered to terminate the traffic of the CMRS providers on the ICO networks, BellSouth is responsible for compensating the ICOs. Before BellSouth and the CMRS providers bilaterally decided to implement so-called "meet point billing"⁶ arrangements with respect to termination to the ICO networks, the interconnection agreements between BellSouth and the CMRS providers incorporated provisions whereby the CMRS provider was responsible for reimbursing BellSouth for any termination payments that BellSouth was responsible for making to the ICOs. These provisions in prior effective interconnection agreements demonstrate that this arrangement is both possible and workable. The ICOs respectively submit that this approach is more reasonable and efficient than the alternative under consideration which will require interconnection and billing arrangements between every carrier that transits traffic through BellSouth and every ICO. In these arbitration proceedings the result could be over 100 new interconnection agreements (5 CMRS carriers multiplied by 22 ICOs) to document that indirect interconnection arrangement which is already deployed in accordance with existing terms and conditions set forth in established agreements.</p> <p>The so-called "meet-point billing" concept discussed by the parties in their negotiations and under consideration in these arbitrations is not an arrangement addressed by the existing interconnection rules and established standards. Meet point billing is a voluntary, mutually agreeable arrangement used when two or more carriers have decided to jointly provide a service to some other customer. With respect to the proposed arbitration issue of which the carrier has the "legal obligation" to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO, the answer is simply that this is not a matter of arbitration because is not a matter</p>

⁶ The Coalition is keenly aware that both BellSouth and the CMRS providers often refer to the implementation of so-called "meet point billing" arrangements as if the event were a natural phenomenon. There is no instance under either industry guidelines or common principles of law whereby two parties may bilaterally establish agreements that imposes obligations on a third party in the absence of the third party's participation or authorization. When the CMRS providers and BellSouth established meet point billing arrangements affecting the ICOs, they never negotiated with any ICO.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 4:</p> <p>When a third party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider?</p>	<p>No Interconnection agreements between the CMRS providers and the ICOs should not include third party transiting carriers</p>	<p>that has been subjected to interconnection rules and established standards. Regardless, even under industry standards, meet point billing is not a mandatory arrangement. In the absence of standards and rules, the matter is left to voluntary negotiation and not arbitration. This fact is rationally reflected by the voluntary compromise arrangements that BellSouth, the CMRS providers, and the ICOs have recently put in place in other states where similar issues were addressed</p> <p>The CMRS providers already enjoy the utilization of an indirect interconnection arrangement with the ICOs through the utilization of transport service provided by BellSouth. These arbitrations do not involve the establishment of new interconnections arrangements. Instead, they involve the establishment of new terms and conditions for the existing arrangement. Under the existing terms and conditions, the ICOs look solely to BellSouth for responsibility for the traffic carried through the physical interconnection between BellSouth and each ICO. The existing interconnection arrangement cannot be maintained in the absence of appropriate terms and conditions that continue to address the use of the existing physical interconnection</p> <p>As indicated throughout this response and throughout the discussions among the Parties, the ICOs do not object to BellSouth's desire to alleviate itself of financial responsibility for the CMRS traffic it carries to the ICO networks through the common trunk connection established for intralATA inter-exchange traffic. The ICOs request, however, that BellSouth's desires not be given preferential treatment at the expense of establishing mutually agreeable processes. The ICOs do not understand why any party or regulator would condone BellSouth's unilateral attempt to impose terms and conditions on the ICOs in the absence of even the semblance of good faith negotiation. This, however, is exactly what BellSouth did when it unilaterally informed the ICOs that it was implementing a "meet point billing" arrangement with the CMRS providers and ceasing payment of associated terminating compensation to the ICOs. The new terms and conditions sought by the CMRS providers cannot be sustainable nor acceptable unless BellSouth fulfills specific obligations and maintains ultimate responsibility regarding the identification of the traffic it carries as the intermediary between the CMRS providers and the ICOs</p>

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 5:</p> <p>Is each party to an indirect interconnection arrangement obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party's network?</p>	<p>Yes. The originating party is responsible for paying applicable transit costs associated with the delivery of its traffic to a terminating carrier</p>	<p>The interconnection obligations established in the Act and set forth in the FCC's rules address interconnection with a LEC's network and interconnection within the LEC's service area.⁷ LECs have no obligations to establish interconnection with other carriers or provide interconnection services at a geographic point outside of its network or in areas where the LEC does not provide LEC service. Accordingly, the interconnection obligations and responsibilities of the ICOs do not extend beyond each of their respective LEC networks and service areas. The ICOs are not responsible for deployment or provisioning of network facilities or services for transport of telecommunications beyond their own networks. [See ICO Exhibit 1, Section 4.2.5; and ICO Exhibit 2, Section 4.5.4.]</p> <p>No LEC, including BellSouth and the ICOs, is obligated to provide interconnection at points that are not within its network service area. A LEC's interconnection responsibilities are related exclusively to its existing network and service area.</p>
<p>Issue 6:</p> <p>Can CMRS traffic be combined with other traffic types over the same trunk group?</p>	<p>Yes. There is no technological reason for requiring CMRS provider traffic to be delivered over segregated trunk groups. It is also economically inefficient to require separate and distinct trunk groups for CMRS traffic.</p>	<p>This is not an issue for arbitration between the CMRS providers and the ICOs. The CMRS Providers already enjoy the utilization of the physical indirect interconnection that is the subject of these arbitrations. The CMRS providers seek only new terms and conditions applicable to the existing interconnection. Under this existing network arrangement, the CMRS providers are not required to deploy any trunk groups to the ICO networks. Instead, the trunk groups referred to in the issue statement above are trunk groups between BellSouth and the ICOs. The manner in which BellSouth and the ICOs decide to maintain physical interconnection, including the potential establishment of distinct trunk groups for different traffic types that each sends to the other, is a matter to be resolved between BellSouth and the ICOs.⁸</p>

⁷ An incumbent LEC's interconnection obligations only arise with respect to the geographic area within which it operates as an incumbent LEC and with respect to its incumbent network and facilities. See 47 U.S.C. § 251(h)(1)(A)-(B) ("For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that—on the date of enactment—provided telephone exchange service in such area." Underlining added). Also, the FCC's rules regarding "interconnection" state that "[a]n incumbent LEC shall provide interconnection with the incumbent LEC's network (1) . . . (2) at any technically feasible point within the incumbent LEC's network." 47 C.F.R. § 51.305, underlining added. The Act's requirement to establish interconnection points with other carriers pertains to the LEC's actual network, not to some other LEC's network or to some other service area.

⁸ The ICOs respectfully note the irony. The ICOs preferred to address this matter as part of a comprehensive three party approach described above. The CMRS providers insisted otherwise. Yet, they raise a matter regarding the provision of physical interconnection between BellSouth and each ICO as an issue for this arbitration! While this issue is

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		<p>Each of the arguments advanced by the CMRS providers in their petition in support of their position on this issue raise matters that pertain to BellSouth's provision of services. BellSouth has yet to respond to the proposals set forth by the ICOs with respect to these issues, and, as discussed previously, the CMRS providers did not want BellSouth to participate in three way discussions</p> <p>To the extent that the TRA considers this issue, the Authority should be fully aware of the competitively favorable position BellSouth holds with respect to the provision of tandem switching and transport services for other competing carriers. No carrier other than BellSouth has the opportunity to transport traffic on a commingled basis to the ICO networks utilizing an interexchange trunk group that technically prevents the terminating ICO from identifying what traffic originates on another carrier's network. No carrier has an established right to obtain this arrangement, and the ICOs are not required to provide any such arrangement to any carrier. At the interstate level, the FCC has previously decided not to require so-called "shared transport" access arrangements specifically because such arrangements would burden smaller LECs, including the ICOs, with respect to their ability to obtain proper compensation for the interconnection services they provide.⁹ If BellSouth chooses to provide "transit services" to enable CMRS providers and other third party carriers to interconnect indirectly to the ICO networks, the</p>

not one subject to Section 252 arbitration, the matter of whether BellSouth should be required to establish separate trunks for traffic carried to the ICO networks does require resolution. The ICOs attempted to address this issue with the parties. [See ICO Exhibit 1, Sections 4 2 1, 4 3 2 1, 4 3 3, and ICO Exhibit 2, Sections 3 3 2, 3 3 4, 4 4 1, 4 4 2, 4 5 1, 4 5 2, 4 5 4, 4 7, 7 2, 7 6, 7 7, 8 0, and 16 0]

⁹ *Report and Order*. In the Matter of Transport Rate Structure and Pricing, Resale, Shared Use and Split Billing, CC Docket No. 91-213, released March 5, 1998. "[W]e decline, based on the record before us, to require incumbent LECs to offer tariffed split billing arrangements." *Id.* at para. 1. "[T]he record indicates that a mandated split billing tariff would be costly and burdensome to many small LECs and, based on that record, we conclude that the benefits would not outweigh these costs. OPASTCO states that, although in general LECs may not be affected economically by mandated split billing, small LECs would be more likely to be harmed by non-payment, as well as by having to support the additional administrative costs that would be incurred to supervise the provision of split billing." *Id.* at para. 17, footnote omitted. The ICOs, in this proceeding, are asked to receive the commingled traffic of multiple carriers commingled over a BellSouth trunk. Instead of holding BellSouth responsible for this traffic, consistent with the existing arrangement, BellSouth and the CMRS carriers seek to impose on the ICOs the very same type of "split billing" that the FCC refused to mandate. On the basis of information provided by BellSouth, the ICOs would be required to "split bill" among several CMRS providers with which they do not directly interconnect. Because of the technical arrangement resulting from the commingled traffic, the ICOs have no means independently to verify the traffic sent by each carrier, nor to determine whether the residual traffic sent through the commingled trunk is the responsibility of any carrier other than BellSouth. As determined by the FCC's consideration of a similar "split bill" process, this arrangement is inequitably disadvantageous to the ICOs.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 7:</p> <p>(A) Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS provider's switch and an ICO's switch?</p> <p>(B) What percentage of the cost of the direct connection facilities should be borne by the ICO?</p>	<p>The POI for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreeable point. Pursuant to applicable federal rules, the cost of the dedicated facility between the two networks should be fairly apportioned between the Parties</p>	<p>establishment of separate trunk groups is necessary under any circumstances where BellSouth is alleviated from the responsibilities it holds under existing arrangements and practices</p> <p>This issue only arises in the context of a direct interconnection between a specific CMRS provider and a specific ICO. The ICOs respectfully suggest that it is not productive or useful to attempt to address company-specific interconnection issues on a generic basis. Each ICO operates its own network with its own established physical points of interconnection, switching and distribution. Within the context of the collective party negotiations, there has been no discussion of the speculative arrangements that would be applicable to any specific direct interconnection situation. As a collective party, the Coalition is aware that individual CMRS carriers and ICOs are negotiating company specific direct interconnection arrangements. To the extent that the resolution of those discussions are not ultimately resolved through negotiation, the resolution of company-specific network issues will require the discussion of company-specific facts, and not global policy considerations.</p> <p>These arbitrations are the result of the Pre-Hearing Officer's May 5, 2003 Order directing the parties to meet collectively to address the transit traffic dispute with BellSouth created when BellSouth unilaterally informed the ICOs that it would not abide by the existing terms and practices pursuant to which it carries the CMRS provider traffic to the ICO networks for interconnection. All parties can agree as a matter of good faith that the focus of the negotiations has been the establishment of new terms and conditions for the "transit" arrangement of the existing indirect interconnection. The ICOs respectfully suggest that the parties agree as a matter of good faith to eliminate this issue 7 from the list of arbitrated issues</p>
<p>Issue 8:</p> <p>What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?</p>	<p>The TRA should adopt a bill-and-keep as the appropriate reciprocal compensation method until the ICOs (1) produce appropriate cost studies, and (2) rebut the presumption of roughly balanced traffic</p>	<p>The rate proposals of the ICOs are more than reasonable and are in compliance with the controlling regulatory requirements</p>
<p>Issue 9:</p> <p>Assuming the TRA does not</p>	<p>Yes. There are circumstances under which the Parties may need, or choose, to use factors</p>	<p>The established interconnection rules and standards do not contemplate a requirement by any party to utilize a traffic factor. In the absence of voluntary</p>

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>adopt bill and keep as the compensation mechanism, should the Parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic?</p>		<p>agreement, the traffic subject to a reciprocal compensation arrangement, where such an arrangement is lawfully established, should be measured and the appropriate reciprocal compensation rate should be applied</p>
<p>Issue 10:</p> <p>Assuming the TRA does not adopt bill and keep as the compensation mechanism for all traffic exchanged and if a CMRS provider and an ICO are exchanging only a <i>de minimus</i> amount of traffic, should they compensate each other on a bill and keep basis? If so, what level of traffic should be considered <i>de minimus</i>?</p>	<p>Bill and keep is often considered to be a practical and an appropriate basis for compensation when the amount of traffic exchanged does not justify the costs of recording and billing. Whether a particular amount of traffic is considered <i>de minimus</i>, and thus does not justify those costs, may vary by carrier (both CMRS and ICO)</p>	<p>Although the ICOs proposed alternative mechanisms to address the concerns raised by the CMRS providers, the ICOs do insist on exercising their rights to require the accurate identification and measurement of all traffic terminated on their networks. While a proposed level of 50,000 minutes a month may be “<i>de minimus</i>” to an individual CMRS provider, this amount is not “<i>de minimus</i>” to the ICOs. The impact of the “<i>de minimus</i>” characterization is easily seen by multiplying the 50,000 minutes by the 5 CMRS Providers involved in these proceedings. The impact grows with the identification of additional carriers and the concerns become even greater if the would-be “<i>de minimus</i>” traffic is commingled with BellSouth’s intrastate access traffic. Under this circumstance, what party is responsible for providing auditable and verifiable data attesting to the “<i>de minimus</i>” traffic from which the ICO would receive no compensation.</p> <p>If an ICO, or any business, simply overlooks all charges for services that are below a certain amount, it would forego large amounts of revenue, and the large volume users of service would be effectively subsidizing small volume users. If the CMRS provider concerns are simply matters of administrative efficiency, their concerns can be addressed by other voluntarily agreed to means. Imposing a “<i>de minimus</i>” benchmark on charges for interconnection services is not an element of any established interconnection standard or rule and the CMRS proposal should not be an issue for arbitration.</p>
<p>Issue 11:</p> <p>Should the parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the</p>	<p>Yes. The CMRS providers have negotiated interMTA factors with other similarly situated LECs in other states.</p>	<p>The ICO position regarding the establishment of an “interMTA factor” is based on the same analysis and consideration set forth in the discussion above regarding Issue 9 and consideration of other default factors. In the course of the negotiations, the ICOs did indicate a willingness to negotiate a mutually agreeable factor. The interests of all parties require that the factor reflects an accurate representation of the actual amount of traffic that is interMTA. In</p>

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
factor be?		addition, the ICOs observe that the amount of traffic that is interMTA will vary with respect to each ICO on the basis of many factors including the geographic scope of the CMRS provider's service area and the proximity of the LEC's service area to an MTA boundary.
Issue 12: (excluding Cingular as to Issue 12(B)) Must an ICO provide (A) dialing party and (B) charge its end users the same rates for calls to a CMRS NPA/NXXX as calls to a landline NPA/NXXX in the same rate center?	Yes. The FCC rules expressly require dialing party regardless of the called party's provider and other state commissions and basic principles of fairness and nondiscrimination requires ICOs to charge the same end user rates	The ICOs fully understand and abide by the Section 251(b) dialing party obligation to the extent that the obligation is applicable. Neither the Section 251(b) dialing party obligation, associated FCC rules and regulations, nor any applicable statute or regulation establish requirements with respect to the rates any LEC, including the ICOs, charge their end user customers for the provision of wireline to wireless calls. Any issue related to ICO end user service charges is not properly the subject of arbitration. ¹⁰
Issue 13: Should the scope of the Interconnection Agreement be limited to traffic for which accurate billing records (11-01-01 or other industry standard) are delivered?	No. All traffic exchanged between the Parties should be included in the scope of the Agreement	The willingness of the ICOs to enter into a new voluntary agreement is conditioned upon assurance that BellSouth will provide the ICOs with complete and accurate usage records pursuant to enforceable terms and conditions
Issue 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth?	No. The agreement should apply to all traffic exchanged between the carriers, and it should not be limited to cover only specific transiting carriers	The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5, 2003 Order which initiated the collective negotiations that have led to these arbitrations: the indirect "transit" arrangement involving BellSouth as an intermediary
Issue 15: Should the scope of the	No. The scope of the Agreement should include both direct and indirect traffic.	The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5,

¹⁰ The ICOs respectfully suggest that the CMRS providers and their representatives withdraw this issue. The CMRS providers cannot point to any statute or regulation that provides support for their position. Within the "Additional Information and Discussion" below, the ICOs will provide a summary demonstrating the absence of any basis to support the assertion of the position advocated by the CMRS providers. In addition to this discussion, the ICOs respectfully observe that those ICOs that are Cooperatives are not subject to the ratemaking jurisdiction of the TRA.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
Interconnection Agreement be limited to indirect traffic?		2003 Order which initiated the collective negotiations that have led to these arbitrations. If the TRA were to ask each party about the scope of the negotiations that have taken place, each party must acknowledge with candor that the discussions have focused on the establishment of new terms and conditions to apply to the existing interconnection arrangement whereby the CMRS providers have chosen to connect indirectly to the ICO networks through BellSouth in lieu of establishing a point of interconnection with any ICO.
Issue 16: What standard commercial terms and conditions should be included in the Interconnection Agreement?	The TRA should adopt the standard terms and conditions contained in (CMRS) Exhibit 2 which are typical of other commercial contracts.	The TRA should adopt the standard terms and conditions contained in either ICO Exhibit 1 or ICO Exhibit 2 attached to this Response
Issue 17: Under which circumstances should either Party be permitted to block traffic or terminate the Interconnection Agreement?	A Party may terminate when the other Party defaults in the payment of any undisputed amount due under the terms of the Agreement, or upon providing requisite notice ninety (90) days prior to the end of the term. All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS providers. Blocking of traffic should never be permitted	An ICO should cease the provision of interconnection services to a CMRS provider when, after appropriate notice and opportunity to cure a default, the CMRS provider remains in default of its lawfully established obligations to the ICO. The provision of notice and opportunity to cure default should be consistent with that provided to other interconnecting carriers pursuant to long existing standards, terms and conditions

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
<p>Issue 18:</p> <p>If the ICO changes its network, what notification should it provide and which carrier bears the cost?</p>	<p>The ICO must comply with the FCC's rules regarding notification of network changes and should bear the cost of those changes. If the CMRS provider objects to a proposed change, the dispute shall be handled pursuant to the Dispute Resolution process section in the Interconnection Agreement. The ICO may proceed with the network change, but shall also maintain the existing network configuration until the dispute is resolved.</p>	<p>Although the rules regarding notification of network changes are not applicable to the ICOs, the ICOs have offered to provide the CMRS providers with greater notice of network changes than the FCC rules require.¹¹ The ICOs have not required or requested that the CMRS providers bear the costs of an ICO network change.</p>

¹¹ See ICO Exhibit 1, Sections 7.3 and 7.7, and ICO Exhibit 2, Sections 7.3 and 7.7

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
<p>ICO Issue 1:</p> <p>In a three party indirect transit arrangement, the carrier sending traffic should be responsible for payment directly to the party with which it physically interconnects</p>	<p>The CMRS providers assert that ICO Issue 1 is the same as Issue 3 above See CMRS Position on Issue 3</p>	<p>The billing and revenue methods between and among the parties should continue to be with the carrier with which another carrier interconnects, i.e., with BellSouth. The CMRS providers should provide compensation to BellSouth for BellSouth's provision of transit traffic service, and BellSouth should continue to remit payment to the ICOs for the CMRS providers' traffic. This is consistent with the manner in which this traffic has been handled for years and is consistent with agreements in other states that BellSouth and the CMRS providers have made with the Independents for this traffic.</p>
<p>ICO Issue 2:</p> <p>BellSouth should not deliver third-party traffic to an ICO that does not sublend a BellSouth tandem</p>	<p>The Telecom Act requires all carriers to connect directly or indirectly with each other 47 U.S.C. § 251(a)(1). If it is technically feasible for BellSouth to deliver traffic to an ICO that does not sublend a BellSouth tandem, then such indirect interconnection is appropriate and required under the Act.</p>	<p>Indirect transit traffic arrangements may be appropriate where small ICOs have not deployed their own tandem switching offices and have elected, for now, to sublend a Bell tandem. However, ICOs that deploy their own tandems have no continuing obligation to use the Bell tandem, transit traffic arrangement, involuntarily. No law or regulation requires any carrier to sublend a BellSouth tandem. There will be a chilling effect on competition if BellSouth is allowed to establish itself always at the center, between and among all other carriers as the switch and transport provider.</p>
<p>ICO Issue 3:</p> <p>Any new terms and conditions applicable to the existing indirect "transit" arrangements should be established in a single agreement among all three parties: the CMRS provider, the ICO and BellSouth.</p>	<p>The CMRS providers assert that ICO Issue 3 is the same as Issue 4 above See CMRS position on Issue 4</p>	<p>Because the relationships between BellSouth, the ICOs and the CMRS providers are inextricably related physically, operationally, and financially in any three party transit traffic arrangement, there should be a single agreement between and among the three parties for this traffic arrangement. To the extent that a approach under which there are three separate agreements is the resolution of this proceeding (i.e., BellSouth-CMRS, BellSouth-ICO, and ICO-CMRS), then the separate agreement between an ICO and a CMRS provider cannot be effective with respect to any specific intermediary carrier (e.g., BellSouth) unless and until the intermediary has an authorizing interconnection agreement in place with the ICO that is compatible and consistent with the separate terms of the ICO-CMRS provider agreement. No carrier has the right to send traffic without an interconnection request, the negotiation of an interconnection agreement, and the approval of that interconnection agreement before the TRA. [See ICO Exhibit 1, Sections 3.1 and 3.5, and ICO Exhibit 2, Section 3.3.]</p>

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
<p>ICO Issue 4:</p> <p>The CMRS providers should clarify which of their affiliate entities seeks new terms and conditions for the utilization of indirect "transit" arrangements.</p>	<p>The CMRS providers will provide the name of the contracting entity(ies).</p>	<p>The CMRS providers are comprised of many corporate entities. An ICO's interconnection will be with the CMRS licensee that holds the license in the specific MTA in which the ICO operates. It will be this specific CMRS provider which terminates intraMTA traffic with the ICO. The CMRS providers have not in all cases indicated which corporate entity will be the contracting entity but must do so. It is not clear which CMRS provider licensee actually operates in the MTAs of each individual ICO. The ICOs asked the CMRS providers for this information and have not yet received it.</p>
<p>ICO Issue 5:</p> <p>The CMRS providers should indicate the specific scope of the traffic originating on their respective networks that is the subject of these proceedings</p>	<p>The Agreement should not place a limit on the area from which mobile calls can be originated. Instead, the agreement should include appropriate compensation mechanisms for interMTA and intraMTA traffic.</p>	<p>Each CMRS provider must provide the specific geographic area from which it will originate mobile user traffic for each type of interconnection arrangement it may have with an ICO. The geographic scope of the originating mobile user area will be one key factor in determining the extent of interMTA traffic to be terminated to the ICO [ICO Exhibit 1 and Exhibit 2, Section 3.1.4.]</p>
<p>ICO Issue 6:</p> <p>Access charges apply to both the origination and termination of interMTA traffic on the networks of the ICOs</p>	<p>CMRS Providers agree that access charges apply to some types of interMTA traffic depending on a variety of factors.</p>	<p>The TRA should note that, consistent with applicable FCC decisions, intrastate and interstate access charges apply to interMTA traffic that a CMRS provider both originates and terminates on the LEC network of an ICO. The ICO's intrastate and interstate access charges apply to both originating and terminating traffic. When a CMRS provider carries a call to a mobile user that is located in another MTA, the CMRS provider is acting as an interexchange carrier, is obtaining originating access from the ICO, and must pay the ICO for this originating service. This is consistent with the FCC's conclusions that the LEC's access charge tariffs apply to interMTA traffic.¹² [See ICO Exhibit 1, Section 4.1.3; and ICO Exhibit 2, Sections 4.3.4 and 4.5.2.]</p>

¹² First Report and Order at note 2485

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
<p>ICO Issue 7:</p> <p>Many of the issues raised in these proceedings are not the subject of established FCC rules and regulations. The parties must recognize that these issues are subject to voluntary agreement, and not to involuntary arbitration</p>	<p>The Telecom Act allows a party to seek arbitration of "any open issues." 47 U.S.C. § 252(b)(1). That an issue may or may not be the subject of an FCC regulation does not affect whether it may be arbitrated.</p> <p>The CMRS providers agree that the inclusion of a change of law provision is appropriate and have included such a provision in their draft interconnection agreement. <i>See</i> CMRS Exhibit 2, Section III.</p>	<p>To the extent that an agreement between the parties is the result of an arbitration pursuant to Section 252 of the Act, then the provisions of the agreement must be consistent with the requirements of Section 251 of the Act and the FCC's implementing rules. Therefore, the "Changes in Law" provision which would recognize subsequent legislative, regulatory or judicial or other governmental decision (including potential clarifications of any matter addressed by the interconnection agreement) that either materially affects the terms of the agreement or determines that the ICO is not required by law to provide some service, arrangement, payment, or benefit to any other party must be included in the arbitrated agreement. [<i>See</i> ICO Exhibit 2, Section 24.]</p>
<p>ICO Issue 8:</p> <p>Any agreement must accurately define the scope of traffic authorized to be delivered over an interconnection to ensure that the interconnection arrangement is not misused.</p>	<p>The agreement should apply to all traffic exchanged between the parties. To the extent that different types of traffic require different treatment, that should be addressed in the interconnection agreement. <i>See also</i> CMRS positions on Issues 13-15 and ICO Issue 5 above.</p>	<p>Any agreement which involves the delivery of traffic by one party to the network of another carrier must set forth the specific scope of traffic that is authorized by the interconnection arrangement. [<i>See</i> ICO Exhibit 1, Sections 3.1 through 3.5, and ICO Exhibit 2, Sections 3.2.1 through 3.2.4 (direct traffic) and Sections 3.3.1 through 3.3.5 (intermediary traffic).]</p>
<p>ICO Issue 9:</p> <p>Issues governing the physical interconnection arrangement between BellSouth and the ICOs must be resolved before effective new terms and conditions can be established between the CMRS providers and BellSouth.</p>	<p>The resolution of any unresolved issues between BellSouth and the ICOs should not be a prerequisite to the establishment of an interconnection agreement between the CMRS providers and the ICOs.</p>	<p>In resolving an interconnection agreement between the ICOs and the CMRS providers, many issues associated with arrangements with BellSouth must be resolved as a prerequisite to any three party arrangement. For example, the scope of traffic ultimately within the scope of any agreement will depend on the physical interconnection terms and conditions between the ICOs and BellSouth. [<i>See</i> ICO Exhibit 2, Sections 3.3 and 4.4.] The billing and compensation terms are dependent on the role that BellSouth play in the process. [<i>See</i> ICO Exhibit 2, Sections 4.5.1 and 4.5.2.] The billing and revenue distribution methods will depend on BellSouth's duties. [<i>See</i> ICO Exhibit 2, Section 4.7.] The term and termination of the agreements will depend on the status of the tandem interconnection between BellSouth and the ICO. [<i>See</i> ICO Exhibit 2, Sections 7.2, 7.6, and 7.7.] Disputes involving measurement by BellSouth and billing to the ICOs and the CMRS providers can only be settled between and among the interrelated parties. [<i>See</i> ICO Exhibit 2, Section 8.] The treatment of proprietary information created by BellSouth can only be resolved between and among the three parties to a transit traffic arrangement.</p>

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
<p>ICO Issue 10:</p> <p>The CMRS providers must provide any specific objections or concerns that they have with the terms and conditions proposed by the ICOs.</p>	<p>The CMRS providers have provided such objections to the ICOs. Those objections are also contained in the filed Petitions for Arbitration and in this Issues Matrix</p>	<p>[See ICO Exhibit 2, Section 16]</p> <p>All issues that arise as a result of the differences in agreement language between the ICOs' Exhibit 1 or Exhibit 2 draft agreements and the CMRS providers' Exhibit 2 draft agreement must be resolved</p>